

Applicant : William L. Bowden et al.
Serial No. : 10/085,303
Filed : February 28, 2002
Page : 2 of 2

Attorney's Docket No.: 08935-257001 / M-4979

fee paid

For the claims to be restricted to different species, the claims must be mutually exclusive. The MPEP is instructive for providing a general test to determine mutual exclusivity:

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (See MPEP 806.04(f))

Here, the test for proper species restriction is not satisfied. Claim 8 recites a limitation (i.e., ethylene carbonate) not recited in claim 1. But, claim 1 does not recite any limitations not recited in claim 8. Thus, the claims are not mutually exclusive, and restriction to different species is improper.

Applicants request that claims 1-17 be examined.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: August 29, 2003

Tu N. Nguyen
Tu N. Nguyen
Reg. No. 42,934

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20717011.doc

12/17/2003 PFENNELL 00000001 061050 10085303

01 FC:1253 950.00 DA

PAGE 88* RCVD AT 12/8/2003 9:26:38 AM [Eastern Standard Time]* SVR:USPTO-EFXRF-111*DMS:8729310*C/SID:18175428906*DURATION (mm:ss):02:30